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ABSTRACT

Model bylaws for independent colleges are presented to assist the institutions in writing or revising their own bylaws. The model is designed to provide the basis, and not to be taken verbatim, for discussion on the form of governance that may be established by private institutions. The bylaw articles concern: powers of trustees; membership of board of trustees; trustees emeriti; officers of the college; powers and duties of the chairman and vice chairman of the board of trustees; powers and duties of the president, vice president(s), secretary, and treasurer of the college; meetings; action without formal meeting; committees; indemnification; conflicts of interest; discrimination prohibited; and review and amendment of bylaws. Several provisions of the model that are particularly appropriate for discussion concern election of members of the board of trustees, age limits for trustees, flexibility pertaining to the number of vice presidents and their duties, standing committees, and membership of the executive committee. (SW)

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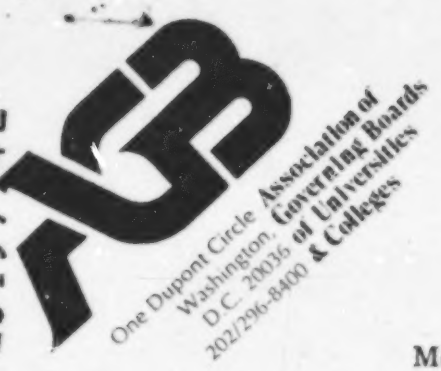

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Model Bylaws for Independent Colleges

The attached model bylaws have been developed for the Association of Governing Boards of Universities and Colleges by the Washington, D. C. law firm of Zuckert, Scoutt and Rasenberger after consultation with attorneys and officers representing a number of our member institutions. This model is designed especially for independent colleges who have requested assistance in writing or revising their own bylaws. It is not designed to be adopted verbatim, but is designed to provide a basis for discussion on the form of governance an institution may wish to establish. Furthermore, the model is not designed to be used by public colleges or universities because state laws governing specific public institutions vary widely in a number of important aspects.

In using this model several points should be kept in mind:

First, the masculine pronoun has been used throughout strictly for simplicity's sake.

Second, the bylaws of any institution of higher learning provide the basis upon which that institution is governed and should not be viewed merely as a legal formality. Therefore, the adoption or amendment of bylaws demands serious attention to insure that the proposals are clearly written and, more important, appropriate to the particular institution.

Third, state laws governing colleges and universities, along with other charitable or educational corporations, vary. While an attempt has been made in the model to conform to the requirements states generally place upon institutions of higher learning, no attempt has been made to take account of all the particular nuances of every state. Therefore, before the suggestions in the model or any other bylaws are adopted, an attorney should be consulted to insure compliance with local law.

Finally, since a wide variety of options is available to a college or university for determining how its governing board is

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organized, any model necessarily involves a number of somewhat arbitrary choices. Comments received from attorneys and officers representing our members on drafts of the model underscored the possible divergence of approaches.

Several provisions of the model stand out as being particularly appropriate for discussion:

1) Article II, Section 2. -

The model provides that the members of the board of trustees shall all be elected by the incumbent trustees. Some universities and colleges take a different approach and provide for classes of trustees and election by class, e.g. three alumni trustees nominated by the alumni.

2) Article II, Section 6. -

The minimum and/or maximum age limits placed on trustees may be found inappropriate and may be altered or eliminated.

3) Articles IV and VII. -

The model does not specify the number of vice presidents or their particular duties. This approach gives the board flexibility in creating new offices or duties as the need arises without requiring amendment of the bylaws. Some institutions may prefer to specify in the bylaws duties assigned to particular vice presidents, e.g. vice president for academic affairs, vice president for development, etc.

4) Article XII. -

The bylaws provide a number of standing committees charged with specific duties. The list may be expanded or reduced. Committees may be consolidated or changed for better definition of role, e.g. from the Committee on Membership to the Committee on Nominations.

5) Article XII, Section 6. -

The model provides that the Executive Committee shall consist of the chairman, vice chairman and the chairman of each standing committee. A board may wish to elect additional members.

This list is, of course, not exclusive and additional modifications may be made in a number of other provisions. The Association of Governing Boards is eager to receive comments upon this model. We are particularly interested in the practical operation of bylaws based on the model, including any problems in implementing the suggested provisions.

Attachment

December, 1977

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[Name of College]

BYLAWS

Adopted by Board of Trustees

[Insert date of adoption and
most recent amendment date]

ARTICLE I
POWERS OF TRUSTEES

The Board of Trustees shall have the power to manage the property and business of the corporation (referred to in this and the following articles as "College"), and shall have the power to carry out any other functions which are permitted by the articles of incorporation, or these bylaws, except insofar as such powers may be limited by law. These powers shall include but shall not be limited to the following:

(1) Appoint or remove the President and other Officers and administrative officials of the College in accordance with these bylaws; the power to appoint or remove administrative officials, but not Officers of the College may, in the discretion of the Board, be delegated to the President of the College;

(2) Approve degrees in course and honorary degrees upon recommendation of the faculty;

(3) Establish and review the educational programs of the College;

(4) Establish annually the budget of the College, which shall be submitted to it upon recommendation of the Finance Committee;

(5) Authorize the construction of new buildings and major renovations of existing buildings;

(6) Authorize the sale and purchase of land, buildings or major equipment for the use of the College;

(7) Institute and promote major fundraising efforts of the College;

(8) Authorize any changes in tuition and fees within the College;

(9) Authorize Officers or agents of the College to accept gifts for the College;

(10) Authorize the incurring of debts by the College and securing thereof by mortgage and pledge of real and personal property, tangible and intangible.

ARTICLE II
MEMBERSHIP OF BOARD OF TRUSTEES

Section 1. The Board of Trustees shall consist of not less than twenty-one (21), nor more than thirty-five (35) persons.

Section 2. New members of the Board of Trustees shall be elected by a majority of the Trustees then in office at each annual meeting of the Board.

Section 3. Trustees shall serve for three-year terms and until their successors are elected and qualified and may succeed themselves in office. However, if a Trustee has served for three consecutive terms (including any partial term), he shall not be eligible for reelection until one year has elapsed after the end of his third term.

Section 4. Any member of the Board of Trustees may be removed from office, for cause, at any meeting of the Board by affirmative vote of two-thirds of the Trustees then in office.

Section 5. Any vacancy in the Board of Trustees may be filled by the remaining Trustees by election at any regular meeting of the Board.

Section 6. No person shall be eligible for election prior to attaining the age of 18 years, nor shall any Trustee be elected to serve a term commencing after he has attained the age of 70 years.

ARTICLE III
TRUSTEES EMERITI

A Trustee who has served for a minimum of three terms or has served for a minimum of two terms and attained the age of 70 years may, upon recommendation of the Membership Committee, be elected by a majority of the Board as a Trustee Emeritus. Trustees Emeriti shall be elected for three-year terms and may be reelected without limit. They shall be entitled to receive notices of all meetings of the Board, to attend and speak at all such meetings, to receive minutes of all

meetings of the Board and Executive Committee, and to be members of all committees except the Executive Committee. They shall have the power to vote in meetings of any committee on which they may serve, but shall not have voting powers in meetings of the Board of Trustees. A Trustee Emeritus shall not be counted as a member of the Board of Trustees for any purpose.

ARTICLE IV
OFFICERS OF THE COLLEGE

Section 1. The Officers of the College shall be the Chairman and Vice Chairman of the Board of Trustees, the President, one or more Vice Presidents, a Secretary and a Treasurer. All Officers shall be appointed by the Trustees. Unless a vacancy in an office occurs at another time, appointment of Officers shall be held at the annual meeting of the Board. The Chairman and the Vice Chairman shall serve for terms of two years and until their successors are appointed and qualified. The other Officers of the College shall serve such terms as may be determined by the Board of Trustees.

Section 2. The Chairman and Vice Chairman shall be members of the Board of Trustees. The President shall be ex officio a member of the Board without power to vote and shall not be counted as a member of the Board or any committee on which he may serve for any purpose. No other Officer need be a member of the Board of Trustees.

Section 3. The Board may appoint one or more Vice Presidents,

Assistant Treasurers, Assistant Secretaries, and such other Officers as may be deemed necessary for the proper management of the College.

Section 4. All Officers of the College shall hold office at the discretion of the Board of Trustees and shall be subject to removal by affirmative vote of a majority of the entire membership of the Board of Trustees, without prejudice to any contract rights such Officer may have against the College.

Section 5. In the event of a vacancy in the office of the President, the Board shall appoint a special Presidential Search Committee to submit nominations of candidates for that office. A vacancy in any of the offices of the College may be filled at any meeting of the Board of Trustees.

ARTICLE V
POWERS AND DUTIES OF THE CHAIRMAN AND VICE CHAIRMAN OF THE BOARD OF TRUSTEES

The Chairman shall preside at all meetings of the Board of Trustees, shall have a right to vote on all questions, shall appoint to all committees the members who are not appointed by the Board of Trustees, and shall have such other powers and duties as the Board from time to time may prescribe. In the absence of the Chairman, the Vice Chairman shall perform the duties of the office of the Chairman.

ARTICLE VI
POWERS AND DUTIES OF THE PRESIDENT OF THE COLLEGE

The President of the College shall be the Chief Executive Officer of the College and the official adviser to and executive agent of the Board of Trustees and its Executive Committee. He shall, as educational and administrative head of the College, exercise a general superintendence over all the affairs of the institution, and bring such matters to the attention of the Board as are appropriate to keep the Board fully informed to meet its policy-making responsibilities. He shall have power, on behalf of the Trustees, to perform all acts and execute all documents to make effective the actions of the Board or its Executive Committee. Except as otherwise provided in these bylaws he shall be ex officio a member of all committees of the Board without power to vote.

ARTICLE VII
POWERS AND DUTIES OF THE VICE PRESIDENT(S)

Each Vice President shall have such powers and shall perform such duties as may be assigned to him by the Board of Trustees or the President. In case of the absence or disability of the President, the duties of that office shall be performed by any Vice President designated by the Board of Trustees, or in the absence of any such designation, by the most senior Vice President available, which, in the absence of other criteria established by the Board, shall be the Vice President with the greatest length of service to the College.

ARTICLE VIII
POWERS AND DUTIES OF THE SECRETARY

The Secretary shall have custody of the seal of the College and shall attest to and affix said seal to such documents as required in the business of the College, including but not limited to deeds, bonds, mortgages, agreements, contracts, diplomas, evidences of the award of degrees, transcripts, abstracts of resolutions, certificates, minutes, and bylaws issued pursuant to the authority of the College. He shall give proper notice of all meetings of the Board of Trustees and shall keep a record of the appointment of all committees of the Board of Trustees and members of the administrative and teaching staffs. He shall keep or cause to be kept a record of the minutes of all meetings of the Board of Trustees and each of its committees. Any of the duties or powers of the Secretary may be performed by an Assistant Secretary who shall be responsible to and report to the Secretary.

ARTICLE IX
POWERS AND DUTIES OF THE TREASURER

The Treasurer shall be the Chief Financial Officer of the College. He shall have the duty to keep or cause to be kept full and accurate accounts of all receipts and disbursements and to obey all lawful orders of the Trustees, the President of the College, and the Finance, Audit and Investment Committees respecting funds, property, and accounts of the College. He shall be responsible for the preparation of any corporate

financial reports as may be required by departments of government, including but not limited to [the applicable state authority]. The Treasurer shall, in the name of the College, give receipts for monies or property as shall be required, deposit funds in accordance with resolution and direction of the Finance Committee or the Board of Trustees, and safeguard the money of the College. He shall not pay out any money unless by order of the Board of Trustees or under such regulations or with such approval as the Finance Committee or Investment Committee may prescribe. He shall cooperate with any independent auditors or certified public accountants retained by the Board of Trustees for the purpose of conducting audits of the accounts of the College, and shall make reports at meetings of the Board of Trustees or the Finance and Audit Committees with respect to the financial condition of the College at such time and in such form as the Board or the Committees may duly require. The Treasurer shall give a bond to the College faithfully to perform the duties of his office, and to account for all monies and other matters and things which may come into his hands and possession by virtue of said office, in such amount as the Audit Committee shall direct.

ARTICLE X
MEETINGS

Section 1. There shall be four regular meetings of the Board of Trustees annually, which shall be held in the winter, spring, summer

and fall on such date and place as may be designated either by the Board or by any two of the Chairman, the President and the Secretary. The annual meeting of the Board shall be the _____ meeting each year.

Section 2. Special meetings may be held at the call of any two of the Chairman, the President and the Secretary; and it shall be the duty of the Chairman or the Secretary to call such special meetings on the request of five Trustees, setting forth the objects of the meeting.

Section 3. Written notice of all meetings of the Board of Trustees shall be sent by the Secretary to each Trustee at least ten days before the date of the meeting. In the case of special meetings, the notice shall state the purposes of the meeting, and no business shall be transacted at such meeting that does not relate to the the purposes stated.

Section 4. Whenever notice is required to be given under the provisions of statutes or of the articles of incorporation or of these bylaws, a waiver thereof in writing signed by the persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance at any meeting by a Trustee shall be conclusively deemed a waiver of notice of that meeting unless objection be made thereto at such meeting.

Section 5. A majority of the Trustees shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the Trustees present and voting at a duly called meeting of the Board or any committee shall be the act of the Board of

Trustees or that committee, except as may be provided by statute or by the articles of incorporation, or by these bylaws.

ARTICLE XI
ACTION WITHOUT FORMAL MEETING

Any action required or permitted to be taken by the Board of Trustees or by any committee thereof may be taken without a formal meeting. Meetings may be conducted by mail, telegram, cable, or in any other way the Trustees shall decide. However, a written consent setting forth the action so taken and signed by all members of the Board or of a committee, as the case may be, must be filed with the minutes of the proceedings of the Board or the committee.

ARTICLE XII
COMMITTEES

Section 1. There may be such special or ad hoc committees as the Board of Trustees may from time to time establish for the discharge of particular duties.

Section 2. There shall be the standing committees specified in this Article. Members of standing committees shall be appointed by the Chairman, after consultation with the Board, annually, at or following the annual meeting of the Board of Trustees. Except as provided in these bylaws, the Chairman of the Board and the President of the College shall be ex officio members of all standing committees, and each

standing committee shall include at least three additional Trustees. Except where otherwise provided in this Article, additional members, including persons who are not on the Board of Trustees, may be appointed. The chairman of each standing committee and a majority of its members shall be Trustees.

Section 3. The Board of Trustees may at any time discontinue any of its standing committees for such time as may be determined, and the duties of any committee so discontinued shall be performed during such discontinuance by the Executive Committee.

Section 4. The chairman of any committee, with the consent of the Chairman of the Board, may request the President of the College to appoint an Officer of the College or a member of the administrative staff to serve as a liaison between the committee and the office of the President. Such liaison person shall assist the committee in the carrying out of its duties.

Section 5. Except as provided in this section, all standing committees shall meet at least two times annually.

Section 6. Executive Committee.

(a) The Executive Committee shall be composed of _____ members, all of whom shall be trustees. The Chairman of the Board of Trustees shall be the chairman of the Executive Committee. The Vice Chairman of the Board and the chairman of each standing committee of the Board shall be members of the Executive Committee. The President shall be

ex officio a member of the Executive Committee, without power to vote, and shall not be counted as a member of that committee for any purpose.

(b) Between meetings of the Board of Trustees, the Executive Committee shall have general supervision of the administration and property of the College except that unless specifically empowered by the Board of Trustees to do so, it may not take any action inconsistent with a prior act of the Board of Trustees, award degrees, alter bylaws, locate permanent buildings on ta..-exempt property held for College purposes, remove or appoint the President of the College, or take any action which has been reserved by the Board.

(c) The Executive Committee shall meet regularly at least _____ times a year in the months of _____, _____, _____, and _____. Special meetings shall be called by the Secretary on the written request of the Chairman or at least three of the members.

(d) A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business.

(e) The minutes of the meetings of the Executive Committee shall be distributed promptly after each meeting to each member of the Board of Trustees. At each and every meeting of the Board of Trustees, the proceedings and actions taken by the Executive Committee since the last meeting of the Board shall be reported to the Board.

Section 7. Committee on Membership. The Committee on Membership shall be composed of _____ members. It shall present to

the Board of Trustees nominations for Trustees to be elected by the Board, and for Chairman, Vice Chairman, Secretary and Treasurer. The Committee shall furnish information relating to the background and qualifications of all such nominees at least two weeks prior to the Board meeting at which an election or appointment is scheduled to take place. The Committee shall develop and administer a program of orientation for newly elected Trustees. The Committee shall also, subject to the requirements as set forth in these bylaws, nominate Trustees Emeriti. It shall report to the Board of Trustees at the annual meeting.

Section 8. Educational Affairs Committee. The Educational Affairs Committee shall be composed of _____ members. It shall, in cooperation with the President, study and appraise the quality of the academic program, measure the program relative to other comparable institutions in terms of teaching load, class size, student-faculty ratios, instructional expenditures, research programs, and other relevant factors; formulate desirable short and long range enrollment goals; advise the Finance Committee on the specifications and requirements for financing the academic programs; recommend salary, pension, and other personnel policies concerning the academic personnel; and make such reports and recommendations to the Board of Trustees relative to the foregoing as may be required.

Section 9. Finance Committee. The Finance Committee shall be composed of _____ members. It shall review annual operating

and capital budgets prepared and presented under the direction of the President and make recommendations with respect thereto to the Board of Trustees. It shall review major financial transactions not provided for in the budget and submit proposed variances with recommendations to the Board of Trustees or Executive Committee. The Treasurer of the College shall be an ex officio member of the Finance Committee, without power to vote and shall not be counted as a member of the Committee for any purpose.

Section 10. Audit Committee. The Audit Committee shall be composed of ____ members. It shall periodically appraise the financial control and accounting systems of the College and recommend any changes it deems appropriate. It shall recommend the designation of an independent auditor each year and shall cause to be prepared and submitted to the Board of Trustees at least once a year an audited statement of the financial condition of the College as of the close of the fiscal year and of the receipts and expenditures for each year. The Committee may request any designated independent auditor, or any officer or employee of the College, to appear before it to report on the financial condition of the College and answer any questions the Committee might have. The President of the College shall not be an ex officio member of the Audit Committee, but may, upon invitation of the Committee, attend any meeting.

Section 11. Development Committee. The Development Committee shall be composed of _____ members. It shall review and recommend

fundraising and public relations programs and report to the Finance Committee on fundraising progress and estimates of income to be received therefrom. It shall report on its activities to the Board of Trustees at the annual meeting.

Section 12. Investment Committee. The Investment Committee shall be composed of _____ members. Acting within the scope of investment policy guidelines established by the Board of Trustees, the Committee shall have charge of the investment of all funds of the College, including the power to effect purchases, sales or exchanges of securities and other investment assets of the College. The Committee may employ investment counsel and may delegate authority to purchase or sell securities for the account of the College to such investment counsel or to any Officer of the College subject to such limitations as the Committee may impose. The Committee shall report changes in investments to the Board of Trustees at each Board meeting. It shall from time to time prepare and submit to the Finance Committee estimates of expected endowment income.

Section 13. Building and Grounds Committee. The Building and Grounds Committee shall be composed of _____ members. It shall review and analyze maintenance and operations policy, recommend improvements, review and recommend approval of plans and cost estimates for new facilities, review the annual operating and capital budgets of the Department of Buildings and Grounds, and recommend approval to the Finance Committee. It shall report on its activities at the annual meeting of the Board

of Trustees and at such other times as it may be requested to do so by the Board of Trustees.

Section 14. Faculty Affairs Committee. The Faculty Affairs Committee shall be composed of _____ members. It shall review matters affecting the faculty of the college, other than those affecting the academic program; consider proposals on such matters and report and make recommendations thereon to the Board of Trustees as may be required.

Section 15. Student Affairs Committee. The Student Affairs Committee shall be composed of _____ members. It shall review matters affecting students of the College, other than those relating to the academic program, consider proposals on such matters, and report and make recommendations thereon to the Board of Trustees as may be required.

ARTICLE XIII
INDEMNIFICATION

Each Trustee and Officer of the College shall be indemnified by it against all expenses actually and necessarily incurred by such Trustee or Officer in connection with the defense of any action, suit, or proceeding to which he has been made a party by reason of his being or having been such Trustee or Officer except in relation to matters as to which such Trustee or Officer shall be adjudicated in such action, suit, or proceeding to be liable for gross negligence or willful misconduct in the performance of duty.

ARTICLE XIV
CONFLICTS OF INTEREST

A Trustee shall be considered to have a conflict of interest if (a) such Trustee has existing or potential financial or other interests which impair or might reasonably appear to impair such member's independent, unbiased judgment in the discharge of his responsibilities to the College, or (b) such Trustee is aware that a member of his family (which for purposes of this paragraph shall be a spouse or child) or any organization in which such Trustee (or member of his family) is an officer, director, employee, member, partner, trustee, or controlling stockholder, has such existing or potential financial or other interests. All Trustees shall disclose to the Board any possible conflict of interest at the earliest practicable time. No Trustee shall vote on any matter, under consideration at a Board or committee meeting, in which such Trustee has a conflict of interest. The minutes of such meeting shall reflect that a disclosure was made and that the Trustee having a conflict of interest abstained from voting. Any Trustee who is uncertain whether he has a conflict of interest in any matter may request the Board or committee to determine whether a conflict of interest exists, and the Board or committee shall resolve the question by majority vote.

ARTICLE XV
DISCRIMINATION PROHIBITED

Section 1. In administering its affairs, the College shall not

discriminate against any person on the basis of race, creed, color, national or ethnic origin, sex or age.

Section 2. In interpreting these bylaws, all masculine pronouns shall be deemed to refer equally to the feminine gender.

ARTICLE XVI
REVIEW AND AMENDMENT OF BYLAWS

Section 1. These bylaws may be changed or amended at any meeting of the Trustees by a two-thirds vote of those present, provided notice of the substance of the proposed amendment is sent to all the Trustees at least ten days before the meeting.

Section 2. Prior to each annual meeting of the Board of Trustees, the Executive Committee shall review these bylaws and suggest any necessary changes thereto.

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